

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-9570-2022 (O&M)

Decided on:-07.02.2023

Gurjit Singh

....Petitioner..

vs.

State of Punjab

....Respondent.

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Umesh Aggarwal, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

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**HARKESH MANUJA J. (Oral)**

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for setting aside of order dated 03.03.2020 passed by the court of learned Judicial Magistrate Ist Class, Amritsar, whereby, the petitioner was declared as a proclaimed offender in the proceedings arising out of FIR No.112 dated 26.12.2016, registered under Sections 279, 304-A, 337, 338 and 427 IPC, Police Station Islamabad, Amritsar.

The case pleaded in the present petition is that the petitioner was declared as proclaimed offender in violation of the mandatory procedure prescribed under Section 82(1) Cr.P.C., without providing him 30 days period for appearance after affixation of the proclamation order under Section 82 (1) Cr.P.C. by the trial court.

On 01.08.2022, this Court passed the following order:-

*The learned counsel for the petitioner has submitted that in pursuance of the order passed by this Court on 25.4.2022, the petitioner could not surrender before the learned trial Court since there was no order with regard to the stay of the arrest of the petitioner although the order dated*

*3.3.2020 by which he was declared as a proclaimed offender was stayed by this Court. He submitted that the petitioner is ready and willing to surrender before the learned trial Court and it may be clarified that the arrest of the petitioner may also be stayed since the matter is at the stage of final arguments and the petitioner wishes to join the proceedings.*

*In view of the above, it is directed that the arrest of the petitioner shall remain stayed till the next date of hearing and he shall surrender before the learned trial Court within a period of two weeks from today.*

*Adjourned to 7.2.2023.”*

In pursuance thereof, admittedly, the petitioner appeared before the trial court on 09.08.2022 and furnished his bail bonds/surety bonds to the satisfaction of the trial court and has continued to appear thereafter. Even on merits, in the present case, the proclamation under Section 82(1) Cr.P.C. was ordered by the trial court, vide order dated 18.01.2020 for 25.02.2020 being the date given for the appearance of the petitioner.

A perusal of Annexure P-2 at page 14 of the paper book shows that the proclamation ordered for 25.02.2020 was actually effected on 30.01.2020 for 25.02.2020, which clearly fell short of the mandatory period of 30 days as provided under Section 82(1) Cr.P.C., which to my mind is one of the safeguards provided under the Code and thus, has to be treated as mandatory and inviolable. My aforesaid view can also be derived from a decision made by this Court in case “Gurpreet Singh vs. State of Punjab”, reported as 2022(3) Cri.CC 136. Relevant para 4 is reproduced hereunder for reference:-

*“Keeping in view the factual position, as noticed in order dated 17.01.2022, it is apparent that a clear period of 30 days w.e.f. the date when proclamation was actually affected upon the date nominated for causing appearance i.e. 28.08.2017 was not afforded to the petitioner and it is only a period of 26 days, which was afforded. Thus, bearing in mind the law laid down in Ashok Kumar’s case (supra) and Anita Sharma’s case (supra), the impugned order cannot sustain and is hereby set aside. The petition is*

*accepted accordingly.”*

In view of the above, the present petition is allowed and the order dated 03.03.2020 passed by the court of learned Judicial Magistrate Ist Class, Amritsar, is set aside.

07.02.2023

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**(HARKESH MANUJA)**

**JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No